Epic Games, Inc. v. Apple Inc.

Expert Testimony of Professor Francine Lafontaine

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Principles of Market Definition



- Market definition starts with identifying reasonable substitutes for the product at issue
- We look at substitutes from the perspective of customers of the product
 - The customers in this case are consumers and developers
 - The focus is on substitution, **not** conduct
- The market Epic defines is both too broad and too narrow

An "iOS App Distribution" Market Is Too Broad

- X All iOS app transactions are **not good substitutes** for one another
 - Other types of apps (food, maps, coupons, weather, dating, messengers...) do not meet the same consumer need
 - A spreadsheet app is not a reasonable substitute for a cooking app
- Clustering "all apps" is not appropriate given market conditions
 - Dr. Evans does not attempt to define a cluster market

Clustering Is Not Appropriate Where Competitive Conditions Differ



- B2B customers went mostly to Staples and Office Depot for various office supplies (pens, paper pads, file folders, etc.)—could be clustered
- B2B customers could (and did) go elsewhere to buy ink and toner—specifically, printer and copier manufacturers—so ink and toner could not be included in cluster market
- Ink and toner faced different competitive conditions—very much like game transactions

Clustering Is Not Appropriate Where Competitive Conditions Differ: Wine Sold at the Supermarket Example











Limits of a "SSNIP" Without Proper Data



Dr. Evans' Alleged Single-Sided "SSNIP Tests" Are Flawed

Dr. Evans agrees that the App Store is a two-sided transaction platform, but his SSNIP tests do not account for indirect network effects

The "tests" ignore the most important type of substitution available to consumers and to developers—the ability to shift transactions to a website or other platform

X Dr. Evans does not use prices that are actually charged for the products he tests

Dr. Evans asserts, with no real world data on price changes, that there would be no switching from a price increase

The Foremarket/Aftermarket Framework Does Not Apply

The foremarket/aftermarket framework does not apply because...

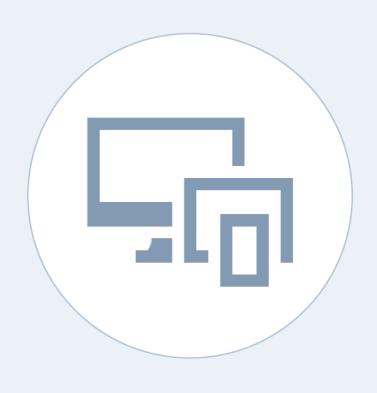
- Consumers do not need to incur the cost of a new device or even switch devices in order to transact
- Game consumers and game developers multi-home and can reach each other outside of the App Store (e.g., web browsers, computers, consoles)

Anticompetitive Concerns are Not Present, Even Assuming A Foremarket/Aftermarket Framework

To determine whether anticompetitive concerns arise in cases where the foremarket/aftermarket scenario might apply, economists consider...

- Whether there is competition in an appropriately defined foremarket
- Whether information is available about aftermarket terms/costs before making foremarket purchase
- Whether there are unexpected adverse changes in aftermarket terms

Epic Has Failed to Identify a Relevant Product Market Reflecting Customer Substitution Possibilities



Epic's product market is:

- Too broad because it includes all apps that are not reasonable substitutes; and
- Too narrow because it fails to take into account all of the substitution possibilities—from the perspective of consumers of games and game developers—for game transactions
 - If transactions are substitutable across platforms, there can be no iOS-only market